IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 490 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRIMATI LEELABEN PRATAPJI THAKORE,THRO'HER HUSBAND -

Versus

THE STATE OF GUJARAT AND OTHERS

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Appearance :
MS JAYSHREE C BHATT for Applicant(s) : 1,
Mr. N.D. Gohil, Additional Public Prosecutor for respondents

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/07/2006

ORAL JUDGMENT

Pratapji Ganeshji Thakore has filed this petition challenging the order of externment dated 24.06.05 passed against his wife, Leelaben Pratapji Thakore by the Deputy Commissioner of Police, Zone-2, Ahmedabad which is confirmed by the appellate authority by order dated 4.10.2005.

The externee was issued show cause notice dated 24.04.2003 under section 59 of the Bombay Police Act, 1951 [hereinafter referred to as the Act] by which the externee was called upon to show cause as to why she should not be externed from Ahmedabad City and contiguous Ahmedabad Rural, Gandhinagar, Kheda and Mehsana Districts for a period of two years under section 56.B of the Act as it was found that the externee is a high-handed lady and is heading a gang of people who are headstrong persons. Area of her operation is also mentioned in the show cause notice. After hearing the externee and considering his explanation, Deputy Commissioner of Police, Zone-2, Ahmedabad passed an order dated 24.06.2005 under section 56(B) of the Act by which the externee was externed from the Police Commissionerate area of Ahmedabad and contiguous Districts, i.e. Ahmedabad, Gandhinagar, Kheda and Mehsana for a period of two years from the date of execution of the order. The said order was challenged by the externee by way of an appeal under section 60 of the Act before the State Government. The appeal was heard by the Under Secretary, Home Department, and by order dated 04.10.2005, the appeal was dismissed. Being aggrieved thereby, the externee has preferred this petition under Article

226 of the Constitution of India.

Ms. Jayshree Bhatt, learned advocate for the externee submitted that though show cause notice was issued to the externee on 24.04.03, the externment order is passed on 24.06.05. It is submitted that there is delay of nearly 16 months in passing the impugned order after conclusion of arguments on behalf of the externee.

On behalf of the respondents, affidavit in reply is filed by S.K. Dave, Deputy Commissioner of Police, Zone-2, Ahmedabad and has tried to explain the delay in paragraph 5 of the affidavit in reply. It is averred that show cause notice was issued on 24.04.03 calling upon the externee to remain present before the authorities on 09.05.03. The externee replied to the show cause notice on 10.06.03 and thereafter the matter was kept fur further hearing on 10.7.2003. As the externee did not remain present on hat date, another notice dated 24.09.03 was given to the petitioner. The externee thereafter examined two witnesses on 30.09.03 and another witness on 20.11.03 and also gave closing purshis on that date. The Presiding Officer submitted his report on 11.12.03 and thereafter final reply was filed by the externee on 27.02.04. Thereafter, the externment order was passed on 24.06.05. In view of this, it is not in dispute that there is delay of about 16 months in passing the final order after the petitioner submitted his final reply.

Even going by the affidavit, there is a delay of about 16 months in passing the externment order after conclusion of the externee's arguments, and there is no explanation whatsoever from the respondents for the inordinate delay.

Ms. Bhatt, learned advocate for the externee submitted that if the authorities were satisfied that the externee was required to be externed on account of her alleged activities, there should not have been so much delay, and the delay vitiates the externment order. Mr. Gohil, learned Additional Public Prosecutor submitted that it is not possible to explain the delay of about 16 months in passing the externment order.

In support of his arguments, learned advocate for the externee has relied upon the judgment in the case of D.B. VIHOL vs. DEPUTY COMMISSIONER OF POLICE reported in 2006 (1) GLH 513. In that case there was an unexplained delay of four months and this Court, holding that unexplained delay is fatal to the case, quashed and set aside the externment order.

Learned advocate for the externee also relied on the decision of a Division Bench of this Court in the case of SANTOSH RAMPRASAD VS. DY. COMMISSIONER OF POLICE REPORTED IN 1992 CR. L.R. (GUJ.) 360. In the aforesaid case also, there was a delay of nearly four months in passing the externment order subsequent to the arguments. In paragraph 9 of the judgment, the Division Bench has held as under:-

> "In the present case, the arguments were submitted by the externee on 4.4.1991 and therefore, the proceedings were concluded on that day and the Externing Authority has passed the order only on 21.8.1991 i.e. after the delay of four months. No affidavit is filed to explain the delay caused in passing the order. Nothing is shown by the

> learned Addl. Public Prosecutor from the record to explain the delay on the part of the Externing Authority in passing the impugned order. It is true that mere delay in passing externment order cannot be fatal to quash such an order, but in our opinion, the delay must be explained. In the present case, there is delay of nearly four months in passing the externment order subsequent to the submission of the explanation and the arguments by the petitioner herein and there is no explanation coming forth in any form. Therefore, in our opinion, the delay in the present case will vitiate the externment order passed by the authority concerned. The preventive action should be taken immediately and any inordinate delay will definitely vitiate such an action taken as a preventive measure. Similar view is taken by this High Court in the case of Chothmal Sagansingh Rajput vs.State of Gujarat and others reported in 30(1) GLR 63".

So far as the facts of the present case are concerned, as pointed out earlier, after submission of written arguments of the externee on 27.02.04, the order of externment was passed on 24.06.05 i.e. after 16 months. In the reply filed on behalf of the respondents, there is no explanation for the delay. The order of externment is, therefore, required to be quashed and set aside on the ground of unexplained delay in passing the externment order.

Considering the aforesaid aspect of the matter, the order of externment dated 24.0605 and the order dated 04.10.05 passed by the appellate authority are quashed and set aside.

Rule is made absolute accordingly.

Direct Service is permitted.

[P. B. MAJMUDAR, J.]

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